

ORDINANCE NO. 230– 07

BY: **SEAN BRENNAN**
(By Request – Law Director)

AN ORDINANCE DETERMINING THE VIDEO SERVICE PROVIDER FEE TO BE PAID BY A VIDEO SERVICE PROVIDER OFFERING VIDEO SERVICE IN THE CITY PURSUANT TO A VIDEO SERVICE AUTHORIZATION; AUTHORIZING THE MAYOR TO GIVE NOTICE TO THE VIDEO SERVICE PROVIDER OF THE VIDEO SERVICE PROVIDER FEE; AND DECLARING AN EMERGENCY

WHEREAS, the Ohio General Assembly enacted Sections 1332.21 through 1332.34 of the Ohio Revised Code, effective September 24, 2007, to provide a statewide “uniform regulatory framework” for the provision of cable television and/or other video service, which will substantially reduce the City of Parma’s traditional franchising authority to regulate cable and/or video service offered in the City using facilities located in the City’s public rights-of-way; and

WHEREAS, the City of Parma has a cable television franchise agreement with CoxCom, Inc. d.b.a. Cox Communication of Cleveland Area (“Cox”), which expires by its own terms on or about December 2, 2015 and pursuant to which Cox is paying franchise fees in the amount of three percent (3%) of the gross revenues it receives from subscribers in the City; and

WHEREAS, the Ohio Bell Telephone Company, an Ohio corporation that uses the name AT&T Ohio (“AT&T”), has approached the City for authority to offer its Project Lightspeed/“U-verse” video service in the City, but pursuant to R.C. Section 1332.23, will now be required to apply for and obtain a video service authorization from the Director of the Ohio Department of Commerce; and

WHEREAS, R.C. Section 1332.23(B)(2) also permits a cable operator with an effective franchise agreement to terminate its franchise with the City, at its option, by applying for a state-issued video service authorization when a competitive video service provider either gives notice that it will begin providing service or actually begins providing service to subscribers in the City; and

WHEREAS, under R.C. 1332.32, a video service provider that is providing service to subscribers in the City pursuant to a state-issued video service authorization must pay the City a video service provider fee (“VSP Fee”) based on a percentage of the provider’s “gross revenues” derived from providing video service in the City, not to exceed five percent (5%) of such gross revenues; and

WHEREAS, R.C. Section 1332.32(C) requires that the percentage of gross revenues on which VSP Fees are paid must be the same as the percentage of gross revenues that a cable operator pays pursuant to a franchise agreement that is in effect, or, if there is no effective franchise agreement under which franchise fees are payable for a given calendar quarter, the VSP Fee shall be zero percent (0%) of gross revenues unless the City determines by Ordinance that the VSP Fee will be a percentage of gross revenues not to exceed five percent (5%) of gross revenues; and

WHEREAS, R.C. Section 1332.32(C)(2) further requires the City to provide all video service providers offering service in the City with notice of the VSP Fee requirements within ten (10) days of receiving notice from the video service provider, pursuant to R.C. 1332.27(A), that it will begin offering service in the City, or the video service provider is not required to pay the VSP Fee to the City; and

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WHEREAS, R.C. Section 1332.32(B)(2)(g) provides that the VSP Fee is paid on a base of gross revenues consisting of revenues received from subscribers only, unless the City specifically enacts an Ordinance uniformly applicable to all video service providers requiring that advertising revenues also be included in the base of gross revenues on which the VSP Fee is paid; and

WHEREAS, R.C. Section 1332.32(B)(2)(g) requires the City to promptly notify affected video service providers of the Ordinance determining to include advertising revenues in the base of gross revenues on which the VSP Fee is paid, but provides that the requirement to include advertising revenues in the base of gross revenues does not take effect until the first day of the first calendar quarter that begins more than thirty (30) days after giving such notice; and

WHEREAS, in order to minimize the negative financial impact on the City it is the intent of this Council to charge the maximum Video Service Provider Fee with the most expansive definition of gross revenues allowed by law; and

WHEREAS, in order to provide timely notice to a video service provider of the VSP Fee, it is necessary for this Council to determine now the percentage of gross revenues on which the VSP Fee will be paid and that advertising revenues shall be included in the base of gross revenues on which the VSP Fee is paid, and to authorize the Mayor to provide the appropriate notice of the VSP Fee to a video service provider within ten (10) days of the City receiving notice that a video service provider will begin providing service in the City.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PARMA, STATE OF OHIO:

Section 1. That this Council of the City of Parma hereby determines, in accordance with the requirements of R.C. Section 1332.32, that all video service providers providing video service in the City pursuant to a video service authorization obtained from the Director of the Ohio Department of Commerce shall pay Video Service Provider Fees ("VSP Fees") based on the gross revenues received from providing video service in the City in an amount to be determined as follows:

A. **in the amount of three percent (3%) of gross revenues, which gross revenue base shall include advertising revenues**, if during the calendar quarter in which the VSP Fee is payable by a video service provider, the Cox franchise remains in effect pursuant to R.C. 1332.23(B)(1)(a).

B. **in the amount of five percent (5%) of gross revenues, which gross revenue base shall include advertising revenues**, if during the calendar quarter in which the VSP Fee is payable, Cox is not paying franchise fees pursuant to its franchise agreement with the City, but has instead obtained a video service authorization from the state to provide video service in the City and terminated its franchise pursuant to R.C. 1332.23(B)(2).

The VSP Fee shall be paid quarterly not sooner than forty-five (45) days nor later than sixty (60) days after the end of each calendar quarter.

Section 2. That the Mayor is authorized and directed to provide any video service provider with notice of the VSP Fee as determined by this Council above, which notice shall be given by certified mail, upon receipt of notice from such video service provider that it will begin providing video service in the City pursuant to a state-issued video service authorization.

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Section 3. That it is found and determined that all formal actions of the Council concerning and relating to the adoption of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of the Council and any of its committees that resulted in such formal action were in meetings open to the public in compliance with all legal requirements.

Section 4. That this Ordinance is hereby declared to be an emergency measure necessary for the immediate preservation of the public health, safety and welfare of the City of Parma, and for the further reason that this measure is necessary to ensure that the City of Parma continues to receive appropriate fees from persons providing video and/or cable service the City using the City's rights-of-way, and this Ordinance shall become immediately effective upon receiving the affirmative vote of two-thirds of all members elected to Council and approval of the Mayor, otherwise from and after the earliest period allowed by law.

PASSED: _____ _____
PRESIDENT OF COUNCIL

ATTEST: _____ APPROVED: _____
CLERK OF COUNCIL

FILED WITH
THE MAYOR: _____ _____
MAYOR, CITY OF PARMA, OHIO